

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

DIANE COWAN, et al.

PLAINTIFFS

and

UNITED STATES OF AMERICA

PLAINTIFF-INTERVENOR

v.

Civil Action No. 2:65-CV-00031-DMB

**BOLIVAR COUNTY BOARD OF
EDUCATION, et al.**

DEFENDANTS

**Memorandum in Support of the Cleveland School
District's Motion to Modify Desegregation Plan**

Defendant Cleveland School District (the "District") submits this memorandum in support of its motion to modify the desegregation plan adopted by the Court in its Order of May 13, 2016. The District seeks to consolidate all District seventh through twelfth-grade students at Margaret Green Junior High/Cleveland High School and assign all District sixth-grade students to the Walter Robinson Achievement Center ("WRAC").¹

I. The District's existing plan

The District operates under an open enrollment plan approved by the Court in January, 2013. Under this plan, elementary students in Kindergarten through fifth grades are assigned to neighborhood schools, students in sixth through eighth grades may choose to attend either D.M. Smith Middle School or Margaret Green Junior High, and students in ninth through twelfth grades may choose to attend either East Side High School or Cleveland High School. The

¹ This excludes the sixth-grade students attending Hayes Cooper and Bell Academy.

District also operates two elementary magnet schools, Hayes Cooper and Bell Academy, serving pre-Kindergarten through sixth grades.

II. The Court's consolidation order

On May 13, 2016, this Court ordered the District to consolidate all students in sixth through eighth grades at East Side High School (except for sixth-grade students at Bell and Hayes Cooper) and students in ninth through twelfth grades at Cleveland High School. [215]. The District appealed.² [219]. Notwithstanding its appeal, the District and the Plaintiff parties have each submitted proposed timelines for implementation of the Court-ordered plan, with full implementation expected for the 2017-18 school year. The Court has not entered an implementation order.

III. The proposed modification to the desegregation plan

Under the proposed modification, there will be no changes to elementary schools. All students in sixth grade will be assigned to the WRAC (except for sixth-grade students at Bell and Hayes Cooper), and all students in seventh through twelfth grades will attend Margaret Green/Cleveland High School. The District will construct a new wing at Margaret Green for students in ninth grade. D.M. Smith Middle School and East Side High School will be closed, resulting in significant savings in facilities expenditures.

With respect to funding of the new wing at Margaret Green, the District can issue three-mil tax notes to raise funds for the construction. The notes work by the District publishing a notice to taxpayers. If petitions objecting to the notes of at least 20% of the registered voters are not received by a date certain, the District may issue the notes. Jim Young, one of the District's experts, states the District could issue notes of between \$3.1 to 3.4 million, the so called "three-

² The District plans to dismiss its appeal if the Court accepts its consolidation plan.

mil notes.” *See*, CSD Ex. 15. The District would then pay the debt service through the three-mil tax monies until the debt is retired. These are generally fifteen-year obligations.

Regarding timing for completion of the new wing, the District will pay a premium for a fast track construction to ensure the building is completed by July 2017, according to the District’s expert architect Joey Henderson. Given the three-mil note capacity, the District is in a financial position to pay this premium. Further, the Board has authorized use of any available space as a temporary ninth-grade academy if the new wing is not ready for use by August 2017.

IV. The District’s consolidation plan is constitutional and is entitled to deference.

A school district is entitled to deference when it proposes an effective, constitutionally permissible plan. *Wright v. Council of Emporia*, 407 U.S. 451, 479 (1972) (Burger, J., dissenting); *Hall v. West*, 335 F.2d 481, 484 (5th Cir. 1964).

Here, the District offers a consolidation plan accommodating the Court’s concerns regarding student assignment. The proposed plan is constitutional and is, therefore, entitled to deference.

V. The District’s plan is superior to that offered by the Government and adopted by the Court, because it maximizes the likelihood of preserving racial diversity.

This Court may consider the likelihood of white student departure when choosing between constitutional desegregation plans. *United States v. Pittman*, 808 F.2d 385, 391 (5th Cir. 1987). The aim of the District’s consolidation plan is to preserve the District’s racial diversity, thereby maximizing opportunities for meaningful integration. As Dr. Rossell confirmed, without white students, there can be no meaningful integration. CSD Ex. 11-E, p. 13.

As of June 1, 2016, 28.5 % of the District’s students were white. [216-1]. That number is decreasing. In fact, between September, 2014 and June, 2016, the District lost eighty-five white students, or 7.5% of its white student population. Exhibit 1. Further, by June 9, 2016,

only four weeks after the Court's May 13, 2016, order, the District had received notice that seven white students from Margaret Green were leaving the District for private schools, and eight white students from Hayes Cooper (rising seventh graders) were leaving the District for private schools. Exhibit 2, Affidavits of Renee' Lamastus and Archie Mitchell. Eleven of these confirmed "forced consolidation and choices as parents are being taken away" as the reason for withdrawing. *Id.* The loss of these fifteen students equates to over \$75,000.00 in state funding. *Id.*

The reluctance of white students to matriculate to D.M. Smith was confirmed by the Private-Plaintiffs' own witness, Leroy Byars, who testified unequivocally that white students would never enroll at East Side High under the plan now adopted by the Court. Tr. 800. The District's proposed plan avoids the obstacle Mr. Byars identified by utilizing the Margaret Green and Cleveland High facilities. With its consolidation plan, the District hopes to minimize the loss of white enrollment already occurring in the District.

Further, the District has been very successful in integrating Cleveland High School and Margaret Green Junior High and believes its consolidation plan is more likely to continue this success compared to the plan ordered by the Court. *See, e.g.*, CSD Ex. 11-E, p. 7, Dr. Rossell's report confirming increased integration at Margaret Green and Cleveland High; Tr. 389-90, testimony from Dr. Smrekar confirming increasing integration at Margaret Green and Cleveland High following implementation of Judge Davidson's open enrollment plan.

VI. Expedited consideration is critical for the District to implement its consolidation plan.

Because implementation of the District's proposed consolidation plan will take a full school year, the District requests expedited consideration of its motion in order to move forward efficiently and effectively in its continued desegregation efforts.

The Cleveland School District requests the Court approve its proposed modification to the May 13, 2016 Order, and grant any and all other relief the Court deems necessary.

Respectfully submitted, this 15th day of August, 2016.

CLEVELAND SCHOOL DISTRICT

/s/ John S. Hooks

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CERTIFICATE OF SERVICE

I, John Hooks, attorney for Defendant Cleveland School District, do hereby certify that I have this date served by electronically filing via the ECF system to all registered counsel of record.

Dated: August 15, 2016.

/s/ John S. Hooks